

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-04-SE-367
Hawking Technologies, Inc.)	NAL/Acct. No. 200532100010
Irvine, California)	FRN # 0012065009

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 20, 2005**Released: June 22, 2005**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Hawking Technologies, Inc. ("Hawking"), apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Sections 2.803(a) and 15.204(a) of the Commission's Rules ("Rules").² The alleged violations involve marketing external radiofrequency power amplifiers in a manner that was inconsistent with the terms of its equipment authorization and the requirements of Section 15.204(a) of the Rules.

II. BACKGROUND

2. On December 9 and 14, 2004, the Enforcement Bureau ("Bureau") received complaints alleging that Hawking was illegally marketing the Hawking Model HSB1 ("HSB1") external radio frequency power amplifier for individual sale.

3. External radio frequency power amplifiers, such as the HSB1, are used to boost the power of radio transmitters. Section 15.204(d)(1) of the Rules³ provides that, if an external radio frequency power amplifier is marketed for individual sale, it "must be of a design such that it can only be connected as part of a system in which it has been previously authorized." Hawking's equipment authorization, FCC ID # SOYHSB1, provides that the HSB1 may be used only with wireless access points⁴ authorized under the equipment authorization FCC ID# NDD9572030410.⁵

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a) and 15.204(a).

³ 47 C.F.R. § 15.204(d)(1).

⁴ The term "wireless access point" is not defined in the Rules. However, the Bureau takes official notice that a wireless access point is a transmitter/receiver whose most common use is to connect wireless devices to the internet.

4. The Bureau investigated the complaints about Hawking's marketing of the HSB1. As part of the investigation, Bureau staff purchased a sample of the HSB1 from an internet retailer on December 13, 2004, for \$78.68. The HSB1 was packaged with an antenna and a connector but the package did not include a wireless access point. The packaging states that "The HSB1 is certified by the FCC to work with the Hawking HWBA54G Wireless-G Access Point as a single system (FCC ID: SOYHSB1). More systems will be certified at a later time." Similarly, the user manual ("Quick Installation Guide") included with sample states "RF Cable and HSB1 are designed to operate only with Hawking HWBA54G as a single system" and that "[a]s of December 1, 2004, the HSB1 has been certified by the FCC to operate as a single system with Hawking's HSBA54G Wireless-G Access Point." However, the Product Information Brochure packaged with the sample states that "... the HSB1 ... attaches to any wireless device (Access Points, Routers, Bridges, Network Adaptors, etc.) with a removable antenna. The HSB1 comes with connector adaptors compatible with all major wireless brands."⁶ The Bureau subsequently observed that retailers which had acquired HSB1 units from Hawking were similarly advertising the device on their websites for use with all major wireless brands.⁷

5. On December 21, 2004, the Bureau conducted internet research concerning the HSB1. As of that date, Hawking's internet site indicated that the HSB1 "works with all major 802.11b and g wireless brands" and "is the ONLY range-boosting product on the market with support for all major wireless brands and networks"; and that "connector adaptors are available for multiple brand support." Only one of the pages observed on Hawking's internet site advertising the HSB1 had a reference to the HSBA54G wireless access point and that page also listed another wireless access point (Hawking Model HWR54G) without indicating which wireless access point was authorized to be used with HSB1.

6. On December 30, 2004, the Bureau issued a letter of inquiry ("LOI") to Hawking.⁸ On January 17, 2005, Hawking responded to the LOI.⁹ In its response, Hawking identifies the Hawking Model HWBA54G as the only wireless access point authorized under equipment authorization FCC ID # NDD9572030410 and states that the HSB1 is capable of operating with other wireless access points "if such other access points use the same 'non-standard' connector."¹⁰ Hawking also states that it imported and distributed in the United States 7,520 units of the HSB1.¹¹ Additionally, Hawking asserts, that after

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⁵ Granted to Edimax Technology Co., Ltd., for wireless 802.11g access points.

⁶ No connector adaptor was actually packaged with the HSB1. However, the Product Information Brochure includes information about the connector adaptors sold by Hawking and how to use them.

⁷ On March 15, 2005, the Bureau observed that Comp USA and PCM both were advertising the HSB1 on their websites as "the ONLY range boosting product on the market with support for all major wireless brands and networks" and stated on their websites that "connector adaptors are available for multiple brand support." Comp USA's website indicated that its description of the device was "[b]ased on manufacturer's information."

⁸ See Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Hawking Technologies, Inc. (December 30, 2004).

⁹ See Letter from Frank Lin, Chief Executive Officer, Hawking Technologies, Inc. to Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 17, 2005) ("LOI Response").

¹⁰ LOI Response at 2.

¹¹ *Id.* at 3.

receiving the LOI, it halted the marketing of the HSB1 as an individual unit and began preparation to bundle the HSB1 unit with the HWBA54G wireless access point.¹² Hawking claims it was unaware of the requirements of Section 15.204(d)(2) of the Rules¹³ that the outside packaging and user manual for external radio frequency power amplifiers must include notification that the amplifier can only be used in an authorized system and that such notice must identify the authorized system by FCC identifier, but has now updated the outside packaging and user manual to comply with the Rules.¹⁴ Finally, Hawking asserts that the HSB1 is in compliance with the labeling requirements of Section 15.19 of the Rules¹⁵ but admits that the HSB1 was not compliant with Section 2.925 of the Rules,¹⁶ which requires a label listing the FCC Identifier.¹⁷ Hawking claims it was unaware of the requirements of Section 2.925 but will take measures to comply before it resumes production and shipment of the HSB1.¹⁸

III. DISCUSSION

7. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including *advertising* for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device¹⁹ unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter [*emphasis added*].

Section 15.204(a) of the Commission’s implementing regulations provides that:

Except as otherwise described in paragraphs (b) and (d) of this section, no person shall use, manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for purpose of selling or leasing, any external radio frequency power amplifier or amplifier kit intended for use with a part 15 intentional

¹² *Id* at 2.

¹³ 47 C.F.R. § 15.204(d)(2).

¹⁴ LOI Response at 3.

¹⁵ 47 C.F.R. § 15.19.

¹⁶ 47 C.F.R. § 2.925.

¹⁷ LOI Response at 3.

¹⁸ *Id.*.

¹⁹ 47 C.F.R. § 2.801 defines a radiofrequency device as “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.”

radiator.²⁰

Section 15.204(d)(1) of the Rules provides that:

Except as described in this paragraph, an external radio frequency power amplifier or amplifier kit shall be marketed only with the system configuration with which it was approved and not as a separate product. An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to §15.247 of this part or a transmitter that operates in the 5.725–5.825 GHz band pursuant to §15.407 of this part. The amplifier must be of a design such that it can only be connected as part of a system in which it has been previously authorized. (The use of a non-standard connector or a form of electronic system identification is acceptable.) The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

8. Hawking admits that it marketed the HSB1 external radio frequency power amplifier for individual sale. Although the HSB1's equipment authorization allows it to be used only with the Hawking Model HWBA54G wireless access point, Hawking advertised the HSB1 as a device that can be used with "all major wireless brands and networks" and offered to supply connector adaptors to accomplish such use. We find, therefore, that Hawking apparently marketed HSB1 in a manner that was inconsistent with the terms of its equipment authorization and the requirements of Section 15.204(a) of the Rules.

9. Hawking also admits that the HSB1 was not compliant with the notification requirements of Section 15.204(d)(2) of the Rules²¹ or with the labeling requirements of Section 2.925 of the Rules. We find, therefore, that Hawking apparently marketed external radio frequency power amplifiers that were not compliant with Sections 2.925 and 15.204(d)(2).

10. Accordingly, we find that Hawking apparently willfully²² and repeatedly²³ violated Section 302(b) of the Act and Sections 2.803(a)(2) and 15.204(a) of the Rules.

11. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the

²⁰ 47 C.F.R. § 15.3(o) defines an intentional radiator as "A device that intentionally generates radio frequency energy by radiation or induction."

²¹ The packaging and user manual of the HSB1 include a notification that the amplifier can be used only in a system for which there is an authorization but do not identify the authorized system by FCC Identifier.

²² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

²³ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

Act.²⁴ In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁵

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)²⁶ and Section 1.80 of the Rules,²⁷ the base forfeiture amount for the importation or marketing of unauthorized equipment is \$7,000. In this case, Hawking imported and sold 7,520 units. We estimate that Hawking’s economic gain from marketing 7,520 devices that retailed for about \$75.00 each was, conservatively, at least two dollars per device for a total of approximately \$15,000. Moreover, we believe that Hawking’s promotion of the HSB1 as a device which “attaches to any wireless device” directly contributed to Hawking’s economic gain. Under the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules,²⁸ substantial economic gain is an upward adjustment factor for Section 503 forfeitures. We find that an increase of \$15,000 from the base forfeiture amount is warranted on the basis of Hawking’s substantial economic gain. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Hawking is apparently liable for a \$22,000 forfeiture. We further find Hawking’s promise to correct the violations is commendable, but such remedial measures do not lessen, mitigate, or excuse its past violations of the equipment marketing requirements.²⁹

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,³¹ Hawking Technologies, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a) and 15.204(a) of the Rules.

14. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Hawking Electric Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 U.S.C. § 503(b)(2)(D).

²⁶ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁷ 47 C.F.R. § 1.80.

²⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁹ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 ¶ 14 (2002); *KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

³⁰ 47 U.S.C. § 503(b).

³¹ 47 C.F.R. § 0.111, 0.311 and 1.80.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³²

19. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to Hawking Technologies, Inc., 15281 A Barranca Pkwy., Irvine, CA 92618.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

³² See 47 C.F.R. § 1.1914.